Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the eighth periodic report of Norway*

1. The Committee against Torture considered the eighth periodic report of Norway (CAT/C/NOR/8) at its 1617th and 1620th meetings (see CAT/C/SR.1617 and 1620), held on 24 and 25 April 2018, and adopted the present concluding observations at its 1646th and 1647th meetings, held on 14 and 15 May 2018.

A. Introduction

2. The Committee welcomes the dialogue with the State party's delegation and the oral replies and written information provided in relation to the concerns raised by the Committee.

B. Positive aspects

3. The Committee welcomes the ratification of or accession to the following international instruments by the State party:

(a) The Convention on the Rights of Persons with Disabilities, on 3 June 2013;

(b) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 27 June 2013;

(c) The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), on 5 July 2017.

4. The Committee also welcomes the State party's initiatives to revise its legislation in areas of relevance to the Convention:

(a) The amendment to the Penal Code that provides that minors may not be sentenced to preventive detention unless "wholly extraordinary circumstances" exist, in 2012;

(b) Juvenile sentences, as an alternative to custodial sanctions, for minors who have committed serious and/or repeated offences, and juvenile follow-up sanctions for up to one year, both of which are executed by the Mediation Service instead of the Correctional Services, in July 2014;

(c) The amendments to the Penal Code of 2005 regarding the preventive detention of minors only when "strictly necessary", which entered into force on 1 October 2015;

* Adopted by the Committee at its sixty-third session (23 April–18 May 2018).

(d) The inclusion of domestic violence as a separate factor in the amendments to the Patient and User Rights Act, on 1 November 2015;

(e) The amendments to the Mental Health Care Act extending the right of patients with psychosocial disabilities to make decisions concerning their own health, and providing them with five hours of free legal aid regarding complaints about treatment carried out without their consent, in 2017.

5. The Committee further welcomes the initiatives of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:

(a) The establishment of a new national human rights institution through Act No. 33 on the National Human Rights Institution of Norway, on 22 May 2015;

(b) The designation of the Parliamentary Ombudsman as the national preventive mechanism against torture and inhuman treatment under the Optional Protocol to the Convention and the creation of an autonomous mechanism in the Ombudsman's Office, in June 2013;

(c) The presentation of a white paper on violence against women and domestic violence after the adoption of a new national action plan with 45 measures for the period between 2014 and 2017, in March 2013, the launch of a five-year research programme on domestic violence and the establishment of a new funding scheme for measures to prevent and combat domestic violence by the Ministry of Justice and Public Security, in 2014;

(d) The launch by the Government of a new action plan regarding violence against children entitled "A good childhood lasts a lifetime", comprising 43 measures, in November 2015; and of a new plan by the Parliament to combat domestic violence and strengthen the care of children exposed to violence and sexual abuse, in October 2016;

(e) The launch by the Government of a new web portal on domestic violence and rape, and the publication by the Director General of Public Prosecutions of the report on the quality of police investigations in rape cases, in 2016;

(f) The appointment by the Government of an official legislative committee to conduct an overall review of the regulation of coercion in health and care services, including electroconvulsive therapy, in the light of the State party's international human rights obligations, in June 2016.

C. Principal subjects of concern and recommendations

Pending follow-up issues from the previous reporting cycle

6. In paragraph 28 of its previous concluding observations (CAT/C/NOR/CO/6-7), the Committee requested Norway to provide further information regarding areas of particular concern identified by the Committee in paragraph 11 on solitary confinement; in paragraph 15 on the detention of foreigners; in paragraph 16 on the legal safeguards afforded to asylum seekers and foreign nationals pending expulsion; and in paragraph 22 on unaccompanied minors missing from asylum centres. The Committee expresses its appreciation for the State party's follow-up response on those matters and the substantive information provided on 22 November 2013 (CAT/C/NOR/CO/6-7/Add.1). In view of that information, the Committee considers that the recommendations included in paragraphs 11, 15, 16 and 22 mentioned above have been partially implemented (see paras. 17, 18, 25, 26, 27 and 28).

Definition of torture

7. The Committee remains concerned that the definition of torture in the Penal Code is not in full compliance with article 1 of the Convention since it does not include a reference to "discrimination of any kind", but continues to enumerate acts based on some specific forms of discrimination (art. 1).

8. **While taking note of the State party's explanation, the Committee invites the State party to reconsider amending its current definition of torture in domestic legislation, in order to align it fully with the definition contained in article 1 of the Convention. The Committee draws the State party's attention to its general comment No. 2 (2007) on the implementation of article 2, in which it states that serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity.**

Incorporation of torture into domestic legislation

9. The Committee regrets that the State party continues to maintain its position regarding the specific incorporation of the provisions of the Convention into domestic law (art. 2).

10. **The Committee reiterates its recommendation (see CAT/C/NOR/CO/6-7, para. 6) that the State party further consider incorporating all provisions of the Convention into domestic law in order to allow it to be directly invoked in court.**

Fundamental legal safeguards

11. The Committee is concerned that persons deprived of their liberty in police detention facilities, in particular pretrial detainees, may not enjoy all the fundamental legal safeguards from the very outset of their detention, such as being informed of their right to lodge complaints regarding their treatment and the conditions of detention, with regard to the actual complaints procedure as well as access to means-tested legal aid (arts. 2, 11, 12, 13 and 16).

12. **The State party should ensure that all persons deprived of their liberty are afforded in law and in practice all fundamental legal safeguards from the very outset of their detention, in accordance with international standards, including being informed of their rights, receiving at their request a medical examination preferably by a doctor of their own choice, having access to a lawyer or free legal aid in all cases required by the interests of justice, particularly during investigation and questioning, being informed of their right to lodge complaints and about the actual complaints procedure, and being brought before a judge within 48 hours of their apprehension.**

Prolonged detention in police cells

13. While noting the reduction in the number of breaches, the Committee reiterates its concern about the continued use of police detention cells for pretrial detention beyond the 48-hour limit prescribed by law, and the 24-hour limit with regard to minors, which may lead to the isolation by default of detained persons owing to the lack of sufficient capacity in prisons for their accommodation. It is also concerned at conditions of detention in certain police facilities that do not meet international standards as was reported with regard to Bergen police headquarters, where cells do not have windows, no personal hygiene products or use of showers is provided to inmates and no outdoor exercise exists (arts. 2, 11 and 16).

14. **The Committee reiterates its recommendation (see CAT/C/NOR/CO/6-7, para. 10) that the State party should abolish the use of police detention cells beyond the 48-hour term stipulated in law. It should implement rigorously the new guidelines concerning the use of police custody facilities drawn up in July 2015 by the National Police Directorate with a view to reduce to a minimum the number of persons who spend more than 48 hours in police custody after being arrested. The pretrial detention of minors should be used as a measure of last resort, should follow clear guidelines and no children should be held in police facilities beyond the 24-hour limit without a court hearing, as prescribed by the Criminal Procedure Act, and alternative measures to police detention should be sought. The State party should expand or refurbish existing police station facilities with inadequate conditions and transfer all pretrial detainees to prison facilities after the period prescribed by law.**

Isolation in pretrial detention

15. The Committee is concerned about the high incidence of systematic isolation, often not required for reasons relating to the investigation, during pretrial detention in police cells, based on a high degree of discretionary assessment, which often cannot be legally challenged. This may amount to de facto solitary confinement and is the result of insufficient space in prison buildings and insufficient staff in regular detention facilities. The Committee is also concerned about the rate of suicides in pretrial detention and about mental and other health problems that may arise from the imposition of isolation and for which treatment may not always be provided (arts. 2, 11 and 16).

16. **The State party should adhere strictly to the 48-hour custody rule and ensure that pretrial detainees are moved as soon as possible to prison facilities in order to avoid unnecessary isolation during their detention in police cells, which may amount to de facto solitary confinement and give rise to mental health problems. It should apply rigorous criteria for isolation and provide inmates with legal and procedural safeguards to address their situation in order to prevent discretionary assessments, as well as with adequate mental and other health care, in particular when subjected to isolation. The State party should ensure sufficient prison facilities and staff, as well as adequate material conditions, to address the needs of and accommodate all pretrial detainees.**

Solitary confinement

17. The Committee is concerned:

(a) About the continued high rates of prolonged isolation and an increase in the number of registered cases of exclusion, isolation, "shielding" and similar restrictive regimes regarding remand and sentenced prisoners, which amounts to solitary confinement, and is due to a large extent to building conditions and staff shortages, including the report in the *Bergens Tidende* on 24 March 2018 that a detainee in Bergen city prison had been subject to isolation in a security cell for almost 1,700 hours over the previous two years (979 hours in 2016 and 700 hours in 2017);

(b) That conditions of de facto isolation that are similar to solitary confinement are not based on an individual administrative decision with a legal basis for exclusion and therefore cannot be challenged or appealed;

(c) About the absence of a set maximum number of days a prisoner can be kept in full exclusion, and that the amendments to the Execution of Sentences Act, whereby isolation can no longer be used as a disciplinary measure against minors and, as a preventive measure, must be limited to a maximum of seven days, have not yet entered into force;

(d) That the legal basis for the use and length of solitary confinement continues to be insufficiently precise and may result from discretionary decisions not respecting the principles of proportionality, which prevent the possibility of administrative or judicial supervision and can amount to violations of the Convention (arts. 2, 11, 12, 13, 14 and 16).

18. **The Committee reiterates its recommendation (see CAT/C/NOR/CO/6-7, para. 11) that the State party ensure full conformity with the Convention and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) adopted in 2015, and should:**

(a) **Implement effectively the revised guidelines enacted by the Government in March 2017 that lay down detailed criteria on the use of solitary confinement and ensure that issues relating to infrastructure and staffing are not used as grounds for exclusion;**

(b) **Reduce the use of solitary confinement to situations that are strictly necessary and amend the legislative framework in order to limit the use of such confinement to exceptional circumstances;**

(c) **Ensure that persons subjected to solitary confinement are attended to by medical staff on a daily basis, that their isolation is discontinued if it is found to**

adversely affect their health, that they enjoy procedural safeguards, and have the right to file complaints and to submit their cases for judicial review;

(d) Evaluate and assess the effects of the practice of isolation or full exclusion on the mental and physical health of prisoners in order to reduce them and use alternative and less intrusive measures whenever possible;

(e) Ensure that de facto isolation of prisoners that is similar to solitary confinement, such as full exclusion, is based on policy, law and guidelines, and set a maximum number of days a prisoner can remain in full exclusion;

(f) Provide prisoners with information about their legal rights and extend the deadline for the administrative appeals of prisoners regarding their exclusion or solitary confinement beyond the current 48 hours;

(g) Review the existing mechanisms of control and legal remedies, provide detailed statistics on the use of isolation and full exclusion from human contact, provide them to the Committee and make them public;

(h) Exempt from and not apply the administration ABE-reform, which has imposed annual budget cuts for all government entities since 2014 as a measure to contribute to the Government's reforms to reduce bureaucratization and increase efficiency, in all places in which persons are deprived of their liberty in order that insufficient building capacities and conditions and insufficient staff do not jeopardize the health and lives of persons deprived of their liberty.

Mental health care for prisoners

19. The Committee is concerned about information that a very high percentage of prisoners have mental health problems and are not always provided with appropriate psychiatric health care. It remains concerned at the severe insufficiency of mental health care services and of the capacities of inpatient psychiatric wards to accommodate prisoners with serious mental illnesses, which often result in their placement in isolation, including security cells, which leads to a further deterioration of their health. It is particularly concerned at the reported absence of adequate health care for persons with symptoms of severe mental illness in Ila, Ullersmo and Alna prisons (arts. 2, 11, 12, 13, 14 and 16).

20. **The Committee reiterates its recommendation (see CAT/C/NOR/CO/6-7, para. 13) that the State party take all measures to ensure that prisoners with psychosocial disabilities and serious mental health problems receive adequate mental health care, by increasing the capacity of inpatient psychiatric wards, including the security departments, and providing full access to mental health care services within all prison facilities. It should abolish the use of full isolation of persons with mental and psychosocial disabilities, in particular when their conditions would be exacerbated by such measures.**

Use of coercive measures in psychiatric health care

21. While taking note of the amendments to the Mental Health Care Act in 2017 and the appointment of a legislation committee to assess the use of coercive measures in health and care services that is scheduled to report to the Government in June 2019, the Committee is concerned:

(a) About the continued widespread use in psychiatric and mental health institutions of restraints and other coercive methods, including involuntary electroconvulsive therapy, with the risk of lasting and irreversible adverse physical and mental consequences, such as the involuntary administration of neuroleptic drugs and other psychotropic medication;

(b) About the weak procedural safeguards for patients and the lack of recourse to less intrusive measures as a first resort in order to protect patients undergoing treatment without consent, in particular electroconvulsive treatment; as well as insufficient information and possibilities for patients to lodge complaints against their treatment and the fear of retribution if they do so;

(c) About the lack of clarity on the frequency and circumstances surrounding the use of coercive electroconvulsive treatment in different mental health care institutions and the existence of geographical differences in the use of involuntary measures as well as the absence of formal registration of involuntary forms of treatment and the notification of patients about it in writing;

(d) That involuntary administration of electroconvulsive treatment is governed by guidelines and not formally adopted law;

(e) About the lack of a requirement for an independent health-care professional to give a second opinion;

(f) That the implementation of the national strategy to increase the prevalence of voluntary treatment in mental health services (2012–2015) has not led to a reduction in the use of coercion (arts. 2, 11, 12, 13, 14 and 16).

22. **The Committee reiterates its recommendation (see CAT/C/NOR/CO/6-7, para. 14) that the State party:**

(a) **Ensure that every competent patient, whether admitted voluntarily or involuntarily, is fully informed about the treatment to be prescribed, including shielding, and given the opportunity to refuse shielding, treatment or any other medical interventions, such as the administration of neuroleptic drugs and electroconvulsive treatment;**

(b) **Promote psychiatric care aimed at preserving the dignity of patients, both adults and minors, and continue its efforts to end the unjustified use of coercive force, including by further amending legislation;**

(c) **Employ coercive measures in mental health care only in compliance with human rights standards and prescribe by law any derogations to the principle of free and informed consent, which should only relate to clearly and strictly defined exceptional circumstances;**

(d) **Ensure that non-consensual coercive measures are formally registered and patients are informed about them in writing;**

(e) **Ensure that non-consensual psychiatric treatment, if applied at all, is only used in exceptional cases as a measure of last resort, for the shortest possible period of time and when absolutely necessary to protect the health or life of the person concerned, only if he or she is unable to give consent and under independent review;**

(f) **Provide clear and detailed regulations on the use of restraints, including restraint beds, and other coercive methods in psychiatric institutions, with the aim of substantially reducing their use and duration of use, and prevent geographical differences in these indicators;**

(g) **Establish clear and effective procedural safeguards for patients, including provisions in law for assisted decision-making by proxy and effective complaints mechanisms, and ensure patients' effective access to legal advice, including free legal aid, as well as obligatory information to patients about this right, for as long as it is required, and that they are not subject to retribution by staff if they avail themselves of complaints mechanisms;**

(h) **Strengthen the regulatory framework and stipulate in law the circumstances allowing for the limited use of coercive electroconvulsive treatment, and establish a system for the collection and publication of uniform statistical information on the use of restraints and other coercive methods, including electroconvulsive treatment, which should be officially registered and subjected to close scrutiny by the supervisory commissions;**

(i) **Consider incorporating into law the abolition of the enforced administration of intrusive and irreversible treatments, such as electroconvulsive therapy;**

(j) **Provide redress and rehabilitation to persons subjected to abusive and arbitrary non-consensual psychiatric treatment without procedural safeguards and independent supervision.**

Violence against women

23. While taking note of the measures taken by the State party, the Committee is concerned about acts or omissions with the consent or acquiescence of State agents in connection with the high incidence of violence against women. In particular, it is concerned that:

(a) Section 291 of the Penal Code has not been amended with a view to placing the lack of free consent at the centre of the definition of rape, while committing any sexual act without consent is a crime under section 297, which carries a lighter sentence;

(b) Reported ineffective or inappropriate investigations into rape cases, the low number of criminal convictions for rape and the high ratio of acquittals for rape compared with other violent crimes;

(c) The incidence of violence, including sexual assault, against Sami women and girls, as well as other vulnerable groups, such as children and older persons, and the reported distrust of the Sami communities towards public authorities (arts. 2, 12, 13, 14 and 16).

24. **The State party should:**

(a) **Amend section 291 of the Penal Code in order to ensure that the lack of free consent is at the centre of the definition of rape, in compliance with international standards and its obligations under the Istanbul Convention, so that rape cases falling outside of the current narrow definition are not treated as a minor sexual offence and closed as "no criminal act proven";**

(b) **Strengthen the capacity and training of the police, prosecutors and judges to investigate and prosecute more effectively cases of violence against women, including sexual violence, such as rape;**

(c) **Investigate the root causes and develop an action plan aimed at the prevention of, protection from and addressing violence, including sexual assault in the Sami community in consultation with the Sami community, and enhance efforts to build confidence in public authorities.**

Situation of asylum-seeking minors

25. The Committee is concerned that large numbers of unaccompanied minors seeking asylum aged between 15 and 18 are missing from the designated reception centres, in particular as they approach the age of 18, since most are given temporary permits that expire when they reach that age and may face forced return to their countries of origin or transit. It is also concerned that the quality of care provided to them is not equal to that provided to children cared for by the child welfare services. The Committee is concerned about the insufficient protection measures and the inconclusive investigations concerning the missing minors as they are vulnerable to trafficking and crime (arts. 2, 11 and 16).

26. **The State party should ensure that unaccompanied asylum-seeking minors aged between 15 and 18 are provided with the same quality of care that is given to children cared for by the child welfare services, and strengthen their protection. It should ensure the effective prevention of such cases in which young asylum seekers go missing, as well as a thorough investigation when they occur, including an effective police investigation and prosecution of cases of trafficking.**

Situation in immigration detention facilities

27. While taking note that the regulations of the Trandum Holding Centre have been revised and of the establishment of additional immigration detention facilities, the Committee is concerned about the treatment of asylum seekers there, including body searches that have been described as humiliating as regards the dignity and integrity of

persons residing there, and that some have been handcuffed while being transferred. It is also concerned about the absence of a prompt mandatory offer of a medical examination upon arrival in all immigration detention facilities, and in particular with regard to the long delays and the refusal of some municipalities that host asylum reception centres to provide health-care services to asylum seekers, citing linguistic and cultural difficulties, their lack of expertise and their uncertain residence status. This makes it impossible to detect signs of torture and provide the necessary treatment to affected persons (arts. 3, 11 and 16).

28. **The Committee reiterates (see CAT/C/NOR/CO/6-7, para. 15) that the State party should ensure that persons held at the Trandum Holding Centre, together with those in other immigration detention facilities, are treated in accordance with the law and are held only for the duration prescribed by law, and that the prevailing conditions and treatment are in line with international standards, including the Nelson Mandela Rules. They should also enjoy all safeguards with regard to non-refoulement. The State party should ensure that prompt mandatory offers of medical examinations are provided to persons accommodated in all the centres promptly upon arrival and establish procedures for identifying torture victims among asylum seekers and for assessing the risk of torture in cases of deportation.**

Training

29. While taking note of the training and educational programmes provided to law enforcement and prison officials, and the measures taken to develop non-coercive investigation techniques, the Committee is concerned that public monitoring bodies discovered that staff at Norgerhaven Prison in the Netherlands, which was leased by Norway for a period of three years ending on 31 August 2018, showed a low degree of knowledge with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) and that training on the provisions of the Convention and the Istanbul Protocol may not be provided to all medical and other professionals dealing with persons deprived of their liberty in the State party (arts. 2, 10, 11 and 16).

30. **The State party should:**

(a) **Ensure that the Istanbul Protocol is made an essential part of the training for all medical professionals and other public officials involved in work with persons deprived of their liberty;**

(b) **Make training on the provisions of the Convention and the absolute prohibition of torture mandatory for law enforcement and prison officials, as well as for judges, prosecutors and lawyers;**

(c) **Develop and implement specific methodologies to assess the effectiveness and impact of training and educational programmes provided to relevant public officials on the provision of the Convention in terms of reducing the number of cases of torture.**

Monitoring of places of deprivation of liberty

31. The Committee is concerned that the State party's lease of Norgerhaven Prison in the Netherlands provided only limited access for monitoring the treatment of prisoners. It is also concerned that the majority of prisoners who were transferred to Norgerhaven Prison were foreigners (arts. 2, 11, 12, 13 and 16)

32. **The State party should:**

(a) **Refrain from leasing detention facilities outside its territory and should ensure that State party officials and public monitoring bodies, including the national preventive mechanism and the national human rights institution, are able to carry out fully their obligations under the Convention, including to monitor and keep under review the conditions of detention in all prisons and places in which persons are deprived of their liberty;**

(b) Ensure that there are sufficient numbers of prison staff with the required level of competence;

(c) Refrain from any discriminatory detention measures against foreigners in detention facilities outside its territory.

Follow-up procedure

33. The Committee requests the State party to provide, by 18 May 2019, information on follow-up to the Committee's recommendations on prolonged detention in police cells, mental health care for prisoners and the situation in immigration detention facilities (see paragraphs 14, 20 and 28 above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.

Other issues

34. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet party.

35. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

36. The Committee requests the State party to submit its next periodic report, which will be its ninth periodic, by 18 May 2022. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its ninth periodic report under article 19 of the Convention.